IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 13TH SEPTEMBER 2007 / 22ND BHADRA 1929

WP(C).No. 23624 of 2007(K)

AGAINST THE ORDER DATED 25/07/2007 IN EP 7/2007 IN OS.13/2005 of MUNSIFF COURT, VATAKARA

.....

PETITIONER:

THALAYIKKARANTEVIDA RAGHUNATHAN,
S/O.KUNHIRAMAN, AGED 60 YEARS, CHORODE AMSOM,
ERAPURAM DESOM, VADAKARA TALUK, KOZHIKODE DISTRICT

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V

RESPONDENT:

SREEDHARAN CHERIYA PURAYIL VEEDU,
S/O.SANKARAN, AGED 49 YEARS, CHORODE AMSOM,
ERAPURAM DESOM, KURIYADI, VADAKARA TALUK,
KOZHIKODE DISTRICT.

BY

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 23624/2007/K

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE PETITION IN E.P. NO.7 OF 2007 DATED 15/1/2007.

EXT. P2: COPY OF THE COUNTER STATEMENT DATED 27/3/2007.

EXT. P3: COPY OF ORDER DATED 25/7/2007 IN E.P. NO.7 OF 2007 IN O.S. 13 OF 2005 ON THE FILE OF MUNSIFF, VADAKARA.

/TRUE COPY/

P.A. TO JUDGE

JP

M.N.KRISHNAN, J

==========

W.P.(C) No.23624 OF 2007

==========

Dated this the 13th day of September 2007

JUDGMENT

This writ petition is preferred against the order in E.P.No.7/2007 in O.S.No.13/2005 of the Munsiff's Court, Vatakara whereby it found that the writ petitioner has got the means to pay the decree debt. The court mainly relied on the fact that the judgment debtor has admitted that he is a member of 'Mathsya thozhilali Gramasangam' and that he is having interest in co-ownership properties. So far as Ext.X1 relating to the membership the original was sought to be produced for marking the copy. The court has mentioned that the learned counsel for the petitioner did not want that document to be marked. The only suggestion is with respect to 0.7 ares of land and 6 cents which according to the decree holder is sufficient for raising the funds to discharge the decree debt. The judgment debtor would contend that it is a property wherein 4 persons are interested as the legal heirs of the mother. The court should have considered regarding that aspect. I feel that the evidence is not sufficient to convincingly establish about the means of the person. I think it is desirable that both parties are given

opportunity to further adduce evidence so as to help the court to have materials to decide the point in issue correctly.

Therefore the order under challenge is set aside and the matter is remitted back to the trial court for consideration after affording opportunity to the parties to adduce evidence and produce documents. Since the decree holder has not appeared before this court in spite of notice, I direct the court below to give notice to him before proceeding with the matter. The parties are directed to appear before the court below on 23.10.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-